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COMMISSION ON HUMAN RIGHTS  
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY  
FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Federation  
of Human Rights Leagues, a non-governmental organization in  
special consultative status

The Secretary-General has received the following written statement which  
is circulated in accordance with Economic and Social Council  
resolution 1296 (XLIV).

[20 January 1998]

1. The International Federation of Human Rights (FIDH) and the Viet Nam Committee on Human Rights are deeply concerned by the widespread abuse of human rights and violations of the fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (ICCPR), notably the freedoms of expression, the press and opinion.

2. In the Socialist Republic of Viet Nam (SRV), 1997 has been a year of continuous social unrest, with tens of thousands of peasants demonstrating in the rural provinces of Thai Binh (north) and Dong Nai (south). This illustrates an increasing discontent within the Vietnamese population, 80 per cent of whom live in rural areas which are largely excluded from the urban-focused process of economic development.

3. These riots, triggered by corruption among local officials, State abuse of land-use rights and crushingly heavy taxation, appear to be the people's only means of expressing their grievances in a society which tolerates no criticism. All demonstrations in the SRV, however peaceful, are quelled by the Vietnamese authorities by means of repression, increased deployment of Security Police forces, arbitrary arrest and "self-criticism" sessions. Following the recent rural protests, several hundred demonstrators were arrested in Thai Binh province in July.

4. By virtue of the Vietnamese Communist Party's monopoly, enshrined in the 1992 SRV Constitution, no private associations may be formed outside the VCP, and the media are under tight State control. Press freedom is further hampered by restrictive legislation and arbitrary practices. On 8 October 1997, Nguyen Hoang Linh, editor-in-chief of the business newspaper Doanh Nghiep, was arrested on charges of violating "State secrets" for reporting on a high-level corruption affair involving the People's Army. The journalist's arrest came in the midst of a concerted government campaign to clamp down on official corruption. He faces a prison sentence of 2 to 15 years.

5. The FIDH and the Vietnam Committee regret that the Vietnamese authorities refuse to engage in a constructive dialogue with the people, and persist in flatly suppressing dissent and all forms of complaint deemed to be politically inconvenient. This is inconsistent with the SRV's binding international commitments, particularly with regard to the ICCPR to which the SRV is a party.

6. The organizations recall the cases of former communist cadres and intellectuals Hoang Minh Chinh, Le Hong Ha, Do Trung Hieu, Ha Si Phu, etc. who were arrested, intimidated and imprisoned because of their peaceful appeals for democratic reforms and the respect of human rights. In the first three months of 1997, as part of a nationwide drive to mobilize artists, intellectuals and writers in support of the VCP, a new campaign of harassment and intimidation was launched against dissident VCP writers and intellectuals. Nguyen Thanh Giang (General Secretary of the National Institute of Geography), Ha Si Phu (scientist and essayist), Tieu Dao Bao Cu (writer), Bui Minh Quoc (poet) and Hoang Tien (writer and human rights advocate) were summoned for interrogation by the police, pressured to make confessions and/or submitted to unjustified administrative harassments. They were also threatened with

punishment if they gave any interviews to the overseas media. The telephone lines of all those cited above have either been cut or closely tapped.

7. Furthermore, during 1997, a number of monks from the Unified Buddhist Church of Vietnam (UBCV, the independent, traditional Buddhist Church adhered to by 80 per cent of the Vietnamese population) were placed in detention under police guard in pagodas belonging to the State-sponsored Vietnam Buddhist Church or other unlawful locations without any justification or charge. Many of these monks had just been released from prison, e.g. Thich Tri Tuu (secular name Le Quang Vinh), superior monk of the Linh Mu pagoda in Hue, detained in solitary confinement at the State-sponsored Tay Thien pagoda in Hue since his release from prison on 7 March 1997; Thich Hai Tang (Nguyen Dinh Hoa), now detained in Quang Tri province; Thich Hai Thinh (Le Phu Thinh) and Thich Hai Chanh (Nguyen Chon Tam), both arrested without charge in November 1996, now under house arrest in their home villages. Other UBCV monks returning from prison have not been allowed to return to their pagodas and continue their religious activities. Released in July 1996, Thich Hanh Duc (Vo Hanh Duc), superior monk of Son Linh pagoda in Vung Tau-Ba Ria province, was prohibited from returning to his pagoda and his pagoda has been confiscated by the authorities, along with all his possessions. Thich Hanh Duc is homeless today. The FIDH and the Vietnam Committee are deeply concerned that such practices of arbitrary arrest and detention without trial have now been legalized by Decree 31/CP on "Administrative detention" adopted on 14 April 1997. This decree authorizes "administrative detention" for any citizen "infringing on national security", whose offence is "not serious enough to be prosecuted criminally". Citizens under "administrative detention" are detained for a period of six months to two years under police surveillance in a place chosen by the authorities. Detainees must make regular reports and self-criticisms, and are encouraged to become informers for the police. Decree 31/CP thus gives the authorities extrajudicial powers to sanction any act perceived as a threat to "national security" even if it does not infringe criminal law, and to detain citizens without a court order. It codifies, moreover, the State's existing mechanisms of surveillance and control, especially in respect of the Buddhists, and plunges the whole population into a climate of suspicion.

8. Repression against Buddhist clergy and followers intensified significantly in 1997. Simply because they support the UBCV, Buddhist monks have been subjected to continuous impromptu police controls, interrogated on their every movement, subjected to residence-permit checks (i.e. the obligatory ho khai, without which people become illegal citizens) and intimidation. Many Buddhist pagodas were confiscated, ransacked or destroyed. In the provinces of Kon Tum, Dac Lac, Gia Rai and Binh Thuan alone, more than 120 UBCV pagodas were vandalized or confiscated in 1997. The authorities also continued their campaign to disband the UBCV "Buddhist Youth Movement" and force its 300,000 members (aged between 6 and 18) to join the Communist Youth Movement. In protest against the disbanding of their movement, as the FIDH and the Vietnam Committee informed the Commission last year, 200 young Buddhists pledged to immolate themselves in Viet Nam.

9. The FIDH and the Vietnam Committee remain deeply concerned about the situation of: UBCV Patriarch Thich Huyen Quang (Le Dinh Nhan), detained without trial for the past 15 years, now under arrest in a small hut in

Quang Ngai province; UBCV Secretary General Thich Quang Do (Dang Phuc Tue), detained in B 14 prison near Hanoi and UBCV scholars Thich Thi Sieu (Le Manh That) and Thich Tue Sy (Pham Van Thuong), detained respectively in Z30A Re-education Camp, Dong Nai province and Ba Sao camp, Nam Ha province. These monks are all detained for the peaceful exercise of their legitimate right to freedom of expression and religion, and for their defence of human rights, Vietnamese culture and Buddhism. They are all in extremely poor health as a result of harsh detention conditions. UBCV monks Thich Tri Tuu, Thich Quang Do and Thich Thien Minh were declared victims of arbitrary detention by the Working Group on Arbitrary Detention (Opinion 21/1997). Prisoners of conscience in Viet Nam have no right to express their grievances, and all protests in favour of improved prison conditions are severely sanctioned. UBCV monk Thich Nhat Ban (Ho Buu Hoa), 60 years old, detained in Z30A Re-education Camp, Dong Nai province, was locked in a solitary confinement cell and fed on starvation rations in August 1997 after he staged a peaceful protest against ill-treatment and called for the right to adequate food rations and medical care for all prisoners. Alarmed by the monk's serious state of health, the FIDH and the Vietnam Committee called on the Working Group on Arbitrary Detention to intervene urgently on his behalf in July 1997. Reports indicate that his health has seriously deteriorated since, and he is still in solitary confinement. Furthermore, in order to prevent prisoners from organizing protests during the Francophone Summit in Hanoi (14-16 November 1997), the Vietnamese authorities transferred 150 political prisoners from Z30A camp to a disciplinary camp (K2) in the depths of the forest. These prisoners are still detained there today, cramped in solitary confinement cells only 2.5 square metres in size, fed on minimum rations of rice and salt water. Amongst these political prisoners, besides Thich Nhat Ban, are several UBCV monks, i.e. Thich Khong Tanh (Phan Ngoc An), Thich Thien Minh (Huynh Van Ba) and Thich Hue Dang (Nguyen Ngoc Dat). Other prisoners include Catholic priest Nguyen Chau Dat, Hoa Hao dignitary Tran Huu Duyen (81 years old), Thai Phi Kich, Nguyen van Bien, Nguyen Thanh Hong, Nguyen Viet Dao and Nguyen van Tuu.

10. Under these circumstances, it is most urgent that the SRV Government accede to the Working Group on Arbitrary Detention's proposal of a follow-up visit to Viet Nam pursuant to its preliminary visit in October 1994. The FIDH and the Vietnam Committee on Human Rights therefore call on the Commission on Human Rights to press the SRV to take all necessary steps during this current session to ensure that this visit may take place as soon as possible.



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**COMMISSION ON HUMAN RIGHTS  
Fifty-fourth session  
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**QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO  
ANY FORM OF DETENTION OR IMPRISONMENT**

**Written statement submitted by the International Federation  
of Human Rights Leagues, a non-governmental organization in  
special consultative status**

The Secretary-General has received the following written statement,  
which is circulated in accordance with Economic and Social Council  
resolution 1296 (XLIV).

[20 January 1998]

GE.98-10466 (E)

1. The International Federation of Human Rights Leagues (FIDH) and the Asociación Pro Derechos Humanos (APRODEH), its member organization in Peru, are concerned at the situation with regard to the administration of justice in Peru.

#### The administration of justice

2. The judiciary and the Public Prosecutor's Office are neither independent nor autonomous, since they are placed under the direction of executive committees with powers that, according to the Constitution, they themselves should exercise. There are also restrictions on the ability of the President of the Supreme Court to carry out his duties.

3. In the course of its work, the Executive Committee of the Judiciary has encroached on others' jurisdictions: it has removed magistrates on highly dubious grounds, disregarded applicable legal provisions and undermined judicial guarantees. In addition, the composition of divisions and courts has been altered with the clear intention of influencing their decisions.

4. The military authorities continue to try cases of human rights violations committed by members of the military and/or the police force, but have not observed decisions adopted by the civil judiciary. Members of the Lima Public Law Division who ordered the enforcement of judicial guarantees became the subject of judicial investigation for allegedly interfering in the decisions of military courts.

5. Lastly, Law No. 26898 has been enacted, which gives temporary magistrates the same status as members of the judiciary and the Public Prosecutor's Office and authorizes the Executive Committee of the Judiciary to appoint additional temporary magistrates. Under this law, temporary magistrates have the same prerogatives as full members of the judiciary without being full members, for as long as they hold the position. That is to say, they have the same rights, powers, duties, constraints and inconsistencies as full members of the judiciary, but they do not have the right to irremovability or guaranteed tenure, which means that they can be transferred or dismissed by decision of the Executive Committee.

6. This rule is particularly important as two out of the five members of the National Elections Tribunal (JNE) are appointed by the Public Prosecutor's Office and the judiciary, and the representative of the latter is ex officio President of the JNE. The terms of office of the representatives of these institutions on the JNE expire in 1998, along with that of the representative of the law faculties of the private universities.

7. The new JNE will be required to decide whether the incumbent President may stand for re-election in 2000. It is also likely to have to conduct a referendum called precisely with the aim of repealing the law allowing the President to be re-elected.

#### The Constitutional Court

8. Last May, three Constitutional Court magistrates were arbitrarily dismissed. Since then there has been no body to act as a constitutional watchdog in the country. Congress took the step as a reprisal after the

magistrates declared the law making it possible for Mr. Fujimori to be re-elected unconstitutional. Despite national and international protests, the measure was upheld and the Court now tries only cases involving the enforcement of judicial guarantees.

#### Anti-terrorist legislation

9. Despite the recommendations of international and regional human rights bodies, there has been no change in the substantive components of anti-terrorist legislation, which contravenes the minimum standards laid down in international treaties and continues to lead to the detention of innocent persons. For example, the terms in which offences are described are imprecise and the penalties disproportionate, the offence of aggravated terrorism is incorrectly defined, and excessive powers are granted to the police force; civilians continue to be tried by the military courts and a special restrictive regime continues to be applied in prisons.

10. Not until October 1997 was the system of "faceless judges" abolished, even though terrorist crimes must be tried by a Special Court within a maximum of 15 days. As a result, such trials do not respect the required safeguards and turn into truly "summary" trials.

11. The pressure to solve the problem of the detention of innocent persons gave rise to what is known as the Ad Hoc Committee, which proposes that such detainees be pardoned after a thorough review of their cases. Although it is not legally proper to grant a pardon to someone who has committed no offence, this mechanism has constituted one more instrument for obtaining the release of the 361 innocent persons detained to date. Despite their release, however, the anti-terrorist legislation continues to affect them: the pardon has not wiped their judicial or police records clean, and this prevents them from finding work; and no innocent party has received reparation of any kind from the State.

12. At the same time, warrants are out for thousands of people, living mainly in mountain and forest regions, who are wanted for terrorist offences. These people were actually forced to collaborate with subversive groups and were included in the judicial proceedings despite the fact that they had participated against their will.

#### Torture

13. Two facts in particular attest to the seriousness of this problem: the practice of torture is now more generalized and widespread, even in connection with common offences; and it is still not defined as an offence - indeed, despite the existence of a number of bills on torture, it is not even on the agenda in Congress. As a result, on the few occasions when torturers have been prosecuted, they have been charged with assault or abuse of authority, given lenient sentences and ordered to pay minimal compensation.

14. Mariela Barreto and Leonor La Rosa, former agents of the Army Intelligence Service (SIE), were tortured by their own colleagues on suspicion of having leaked information to the press. Mariela Barreto died and was dismembered, while Leonor La Rosa was left virtually disabled. In her

testimony, Leonor La Rosa maintained that persons accused of terrorism were subjected to torture in the SIE basement. She also confirmed that torture took place. According to a survey by human rights organizations, 77 per cent of the inmates of high security prisons had undergone some kind of ill-treatment or torture during the police investigation.

15. The practice of torture appears to be a more serious problem in areas under a state of emergency, and sexual violence is frequently used against women in detention.

#### Legislation on amnesty and impunity

16. Since June 1995, when Laws Nos. 26479 and 26492 granted total amnesty to those who had violated human rights between 1980 and 1995, impunity has been on the increase in Peru, thereby encouraging further human rights violations. In the face of national and international condemnation, the Constitutional Court upheld the legislation on the grounds that its consequences "had run their course"; and dismissed the complaint of unconstitutionality.

17. The victims of human rights violations have no protection whatsoever. The Government has not legislated in any way for their full reparation, despite the express recommendation of the Human Rights Committee that it should remedy the consequences of the amnesty laws (see document CCPR/C/79/Add.67, para. 20).

#### Prison conditions; inmates' regime; situation in Challapalca Prison.

18. The basic health rights of prisoners - of whom 69.6 per cent are awaiting trial and 30.4 per cent have been convicted - are not respected, and they receive an allowance of US\$0.70 per day for food.

19. A special regime has been introduced for "recalcitrant" prisoners in order to "safeguard the principle of authority and national security", with an initial period of isolation when prisoners' social contacts and freedoms are reduced to a minimum. Under this regime, prisoners have been transferred to Challapalca Prison (between the Departments of Tacna and Puno), which is considered a "punishment prison" since conditions there are below the minimum for human survival. It is 4,600 metres up, with temperatures below 0° C. During the night of 8 August and the early hours of 9 August, 49 prisoners were transferred there from Lima, having previously been confined in Yanamayo and La Capilla prisons in the towns of Puno and Juliaca respectively.

20. After objections from the Office of the People's Advocate, a delegation from the National Human Rights Commission was refused entry to the prison on 2 July 1997, as were lawyers from human rights organizations on 16 September 1997.

21. Those in prison for terrorism or treason - a total of 3,515 persons - are also subjected to an inhumane regime. Under Decree Law No. 25475, they must serve their sentence in a maximum security prison, in solitary confinement for the first year and with forced labour from the second year until their release. Before June 1997, they received only one 30-minute visit per month from two members of the immediate family, and they are now permitted

one one-hour visit per week from three members of the family. However, in many cases this is impractical owing to the distance between the family home and the prison. The prisoners should therefore be transferred to a prison located where their families live. Furthermore, they only have one half-hour of sunlight per day. The regime being applied to them is the one for "recalcitrant" prisoners, which contravenes the United Nations Standard Minimum Rules for the Treatment of Prisoners, and indeed Decree Law No. 25475 itself, which lays down a maximum period of solitary confinement of one year.

22. The situation with regard to minors in prison continues to give cause for concern. In contravention of various regulations, around 37 minors are imprisoned with adults and have no rehabilitation programmes.

23. FIDH and APRODEH request the Commission to give particular consideration to this situation.

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**INDIGENOUS ISSUES**

Written statement submitted by the International Federation of Human Rights,  
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,  
which is circulated in accordance with Economic and Social Council  
resolution 1296 (XLIV).

[20 January 1998]

GE.98-10469 (E)

1. The International Federation of Human Rights (IFHR) wishes to draw attention to the fact that indigenous peoples, whose existence as peoples is under great threat, have an imperative need for unequivocal recognition and appropriate protection for their rights. IFHR is greatly concerned about the situation of indigenous populations, who suffer from exclusion and serious discrimination, and is disturbed to find that in most countries they still do not enjoy facilities enabling them to choose their models of economic, social and cultural development freely, as required by international law.

2. Major initiatives have been launched in the United Nations, including the proclamation of an International Decade of the World's Indigenous People, with the aim of adopting a declaration on the rights of indigenous peoples and setting up a permanent forum for indigenous issues. These projects ought now to be brought to a successful conclusion.

3. IFHR stresses that protection for the human rights of indigenous peoples can only be effective if it is adapted to their individual situations. Their rights ought to be fully recognized by precise texts and their situation dealt with by appropriate organs.

Draft declaration on the rights of indigenous peoples

4. IFHR notes with disappointment that the Working Group set up under Commission on Human Rights resolution 1995/32 to draw up a draft declaration on the rights of indigenous peoples ended its 1997 session by adopting only two articles, which, though admittedly important ones, are minor in relation to the scope of the project as a whole.

5. In deciding to base its work on the draft adopted by the Working Group of the Sub-Commission, the Working Group of the Commission took a constructive approach, refusing to let the project get bogged down after the many years of work and consultation that had gone into it.

6. However, it appears from Governments' statements at sessions of the Working Group of the Commission that the stumbling block in all discussions remains indigenous peoples' right of self-determination. That right, is the foundation for the rest of the draft declaration: without it, the project would lose its essential substance.

7. The right of self-determination of peoples, however, has long been part of international law. It is to be found, in its most explicit form, in common article 1 of the two International Human Rights Covenants of 1966. Nothing in the way those articles are formulated places any restriction on the "peoples" in question as subjects of the right of self-determination. It is now time that States accepted their responsibilities under the international law they have created: the linguistic subterfuge of treating indigenous persons as populations and not peoples is simply a means of denying them their rights. It is no longer possible today to use such grounds as a reason for continuing to hold up work on the adoption of the draft declaration.

8. It is essential that the principle of non-discrimination in the enjoyment of human rights should be applied to indigenous persons. Nevertheless, that is not enough when what is at stake is to do indigenous peoples justice, particularly with regard to control over land, territory and natural resources. It is not enough, either, when it is a question of giving

these peoples the means to preserve their specific cultures and to develop economically, socially and culturally in accordance with their own wishes and development models.

Proposal for the establishment of a permanent forum for indigenous peoples

9. The gaps in the existing United Nations system as far as indigenous issues are concerned make it necessary to establish a permanent forum specifically to deal with such questions. The particular and complex nature of indigenous affairs requires that they should be centralized and dealt with in a manner that takes account of their interdependence.

10. IFHR was actively involved in the work of the second workshop on the question, organized at Santiago. It calls upon States to establish such a forum as soon as possible and supports Sub-Commission resolution 1997/10 recommending that the Commission should consider ways of furthering its establishment. The forum should have a broad mandate, covering all relevant sectors of United Nations activities. Conceived as an interface between Governments, indigenous peoples and the United Nations, the forum could base its work on the future declaration on the rights of indigenous peoples and, in the meanwhile, start examining the various international instruments establishing indigenous rights. The establishment of this body, which should come under the Economic and Social Council, would be a step towards the recognition of indigenous peoples as members of the family of peoples of mankind.

Consequences of the activities of national and transnational corporations for the rights of indigenous peoples

11. The exploitation of natural resources in indigenous lands by national or transnational industrial corporations, without any legal or moral rules, poses an acute threat to the survival of indigenous peoples as individual groups and to the life and dignity of the persons belonging to them.

12. The international community should therefore draw up a general system of rules applicable to transnational corporations, paying due regard to the specific problems raised when their activities are conducted in indigenous territories. These rules should among other things make it an obligation for the corporations concerned to obtain the free and informed consent of indigenous peoples, through their chosen representatives, before initiating or conducting activities on their land, territory or resources. Provision should be made for consultation of indigenous peoples at all stages. Mitigatory measures (limitation of negative effects of operations on the environment) and mechanisms for compensation and profit-sharing should be introduced. IFHR supports the initiative of the indigenous organizations which have put forward guidelines that multinational corporations ought to agree to follow (E/CN.4/Sub.2/1997/14), but considers it necessary to draw up binding international rules on that basis.

13. IFHR is publishing early in 1998 a mission report on this question, dealing with the situation of the Mapuche peoples in Chile, and particularly the problems raised by the project for the construction of a dam on the Bio-Bio river by ENDESA S.A., a private electricity company.

Other matters of concern

14. IFHR considers that it is of the highest importance to protect the heritage of indigenous peoples. The common heritage of mankind is impoverished when a people disappears, with its special characteristics, its knowledge, its beliefs, its arts and its sites. The protection of the rights of indigenous persons, in this field, should be suited to their particular situation: it is necessary to develop a sui generis regime applicable to their heritage.
15. IFHR supports Sub-Commission resolution 1997/13 proposing that a new seminar should be held on the draft principles and guidelines for the protection of the heritage of indigenous peoples proposed by the Sub-Commission's Working Group (E/CN.4/Sub.2/1995/26). This draft has the great merit of giving a particularly broad definition of the concept of "heritage of indigenous peoples" and introducing innovative ideas suited to the particular problems facing indigenous peoples.
16. IFHR notes that the Convention on Biological Diversity recognizes the importance of promoting and protecting indigenous peoples' right to their own knowledge, but that it does not lay down rules with regard to biological and genetic prospecting in their territories. However, in practice, it is disturbing to note that the rights of indigenous peoples in this field are denied or neglected by certain international corporations, which do not hesitate to negotiate directly with families, thus bypassing the indigenous representative bodies. The draft declaration on the rights of indigenous peoples might usefully make good the omissions in the Convention, particularly in articles 3, 19, 20, 29 and 30. It is essential for the survival and development of indigenous peoples that their rights, as peoples, over their own genetic resources and their traditional lore should be recognized. The Brundtland report of the World Commission on Environment and Development entitled "Our Common Future" (March 1987) stressed the urgent need for action in this field.
17. IFHR is greatly concerned at the precarious situation in which indigenous peoples find themselves, as was unfortunately shown by the events in Chiapas in December 1997 (see IFHR's written statement on the situation in Mexico). The refusal to recognize the autonomy of these peoples as such is compounded in many countries by their members' inability to secure respect for their fundamental rights. That is why IFHR supports indigenous persons' efforts to secure recognition of their rights and of their place in the United Nations. It calls upon States to take practical measures to guarantee the full exercise by indigenous peoples of their rights.
18. Because it recognizes the importance and urgency for "Our common future" of securing full recognition for the rights of indigenous peoples, IFHR decided at its thirty-third Congress, held at Dakar in November 1997, to set up its own unit for coordination and expertise on the question of indigenous peoples' rights.
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